

HOUSE BILL REPORT

HB 2052

As Amended by the Senate

Title: An act relating to clarifying marijuana product testing by revising provisions concerning marijuana testing laboratory accreditation and establishing a cannabis science task force.

Brief Description: Clarifying marijuana product testing by revising provisions concerning marijuana testing laboratory accreditation and establishing a cannabis science task force.

Sponsors: Representatives Stanford, MacEwen, Kloba and Reeves.

Brief History:

Committee Activity:

Commerce & Gaming: 2/18/19, 2/19/19 [DP];

Appropriations: 2/27/19, 2/28/19 [DP].

Floor Activity:

Passed House: 3/6/19, 95-2.

Senate Amended.

Passed Senate: 4/13/19, 44-1.

Brief Summary of Bill

- Transfers authority and responsibility for marijuana product testing laboratory accreditation requirements to the Department of Ecology (Ecology), from the Washington State Liquor and Cannabis Board (LCB), effective July 1, 2022.
- Requires Ecology to determine, assess, and collect an annual fee to cover the direct and indirect costs of implementing the marijuana product testing laboratory accreditation program, subject to requirements.
- Establishes the Cannabis Science Task Force (Task Force) to collaborate on the development of appropriate laboratory quality standards and to establish a work group on proficiency testing and another work group on laboratory quality standards.
- Requires the Task Force to submit a report to the Legislature by December 2020, with findings and recommendations for laboratory quality standards for cannabis testing laboratories.

HOUSE COMMITTEE ON COMMERCE & GAMING

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass. Signed by 11 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Kloba, Morgan, Vick and Young.

Staff: Peter Clodfelter (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Cody, Dolan, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Minority Report: Do not pass. Signed by 2 members: Representatives Dye and Kraft.

Staff: Linda Merelle (786-7092).

Background:

Marijuana Product Testing and Laboratory Accreditation Requirements.

Marijuana Product Testing. On a schedule determined by the Washington State Liquor and Cannabis Board (LCB), licensed marijuana producers and processors must submit representative samples of marijuana or marijuana products produced or processed by the licensee to an independent, third-party testing laboratory meeting accreditation requirements established by the LCB, for inspection and testing. Inspection and testing is to certify compliance with product standards adopted by the LCB, and various fields of testing are required.

Representative samples of marijuana are subject to testing for potency, moisture content, and foreign matter. Additionally, representative samples of marijuana must undergo microbiological and mycotoxin screenings, and certain marijuana products like marijuana concentrates, depending on the processing method, are subject to testing for residual solvents. For marijuana products to qualify for labeling and sale as medically compliant products under rules adopted by the Department of Health, generally representative samples must additionally be tested for pesticides and heavy metals. Any sample remaining after testing is destroyed by the lab or returned to the licensee. Marijuana licensees must submit the results of inspections and testing to the LCB. If a sample inspected and tested does not meet the standards developed by the LCB, the entire lot from which the sample was taken must be destroyed.

Accreditation of Marijuana Product Testing Laboratories. Initiative 502 (2012) directed the LCB to adopt rules, in consultation with the Department of Health and the Department of Agriculture, establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with product standards adopted by the LCB. The LCB has developed a proficiency testing program to certify marijuana product testing laboratories that demonstrate an ability to perform accurate laboratory tests of marijuana products in a given

field of testing. Pursuant to agency rules, the LCB may require a third-party validation and ongoing monitoring of a certified lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. Certified labs are responsible for paying all vendor fees for validation and ongoing monitoring directly to the LCB's vendor.

In the 2018 Supplemental Operating Budget, \$98,000 was provided to the Department of Ecology to begin conducting research into appropriate protocols and accreditation standards for marijuana product testing laboratories, with a directive to submit a report to the appropriate committees of the Legislature by January 2019, containing recommendations regarding laboratory accreditation standards that should be applied to marijuana product testing laboratories.

Summary of Bill:

Marijuana Product Testing and Laboratory Accreditation Requirements.

Effective July 1, 2022, authority and responsibility for marijuana product testing laboratory accreditation requirements is transferred to the Department of Ecology (Ecology), from the Washington State Liquor and Cannabis Board (LCB). Ecology must determine, assess, and collect annual fees sufficient to cover the direct and indirect costs of implementing a marijuana product testing laboratory accreditation program from laboratories seeking marijuana product testing accreditation or renewal. Ecology must develop a fee schedule allocating the costs of the accreditation program among its accredited marijuana product testing laboratories.

Ecology may establish a payment schedule requiring periodic installments of the annual fee, which is deposited in the Dedicated Marijuana Account. The fee schedule must be established in amounts to fully cover, but not exceed, administration costs, program development costs, and oversight costs. Ecology must review and update its fee schedule biennially. The costs of marijuana product testing laboratory accreditation are those incurred by Ecology in administering and enforcing the accreditation program. The costs may include, but are not limited to, the costs incurred in undertaking the following accreditation functions: (1) evaluating the protocols and procedures used by a laboratory; (2) performing on-site audits; (3) evaluating participation and successful completion of proficiency testing; (4) determining the capability of a laboratory to produce accurate and reliable test results; and (5) such other accreditation activities as Ecology deems appropriate.

By July 1, 2022, Ecology must, in consultation with the LCB, adopt rules to implement Ecology's duties pertaining to the marijuana product testing laboratory accreditation program. Effective July 1, 2022, the directive to the LCB to establish, by rule, accreditation requirements for marijuana product testing laboratories, is repealed. Until July 1, 2022, the LCB is granted additional rulemaking authority to adopt rules necessary to implement the marijuana product testing laboratory accreditation program and to adopt quality assurance and product standards.

Cannabis Science Task Force.

A Cannabis Science Task Force (Task Force) is established. Membership includes a representative appointed by Ecology, the Department of Agriculture, the Department of Health, and the LCB. A majority of the agency members must select additional members,

who must include representatives from state and local agencies, and tribal and local governments, with expertise in chemistry, microbiology, toxicology, public health, or food and agricultural testing methods, as well as nongovernmental cannabis industry scientists.

The representative from Ecology must serve as chair of the Task Force. The Task Force must collaborate on the development of appropriate laboratory quality standards for cannabis testing laboratories and must establish two work groups: (1) a proficiency testing program work group led by Ecology; and (2) a laboratory quality standards work group to be led by the Washington State Department of Agriculture (WSDA).

The Task Force may create additional advisory work groups as necessary. Ecology must provide staff support and pay Task Force expenses. The Task Force must submit a report to the relevant committees of the Legislature by December 1, 2020, that includes the findings and recommendations for laboratory quality standards for cannabis testing laboratories. The report must specifically include recommendations relating to the following: (1) appropriate approved testing methods; (2) method validation protocols; (3) method performance criteria; and (4) sampling and homogenization protocols. The Task Force must meet at least four times during 2019, with the first meeting held by September 1, 2019. The entire act is null and void if specific funding for the act is not provided by June 30, 2019, in the omnibus appropriations act.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes to the House bill:

- The date for transferring authority and responsibility for marijuana product testing laboratory accreditation requirements to the Department of Ecology (Ecology), from the Liquor and Cannabis Board (LCB), is changed from July 1, 2022, to July 1, 2024.
- It is provided that the initial program development costs must be fully paid from the Dedicated Marijuana Account, while the administrative and oversight costs will continue to be paid from moneys generated by the fees determined by Ecology.
- It is provided that the Cannabis Science Task Force may reorganize the existing two work groups (the proficiency testing work group led by Ecology and the laboratory quality standards work group led by the Washington State Department of Agriculture), and is not limited to only creating additional work groups.
- The 2020 report by the Cannabis Science Task Force on laboratory quality standards is limited to laboratory quality standards for pesticides in plants. The report is due July 1, 2020, instead of December 1, 2020, and minimum report requirements are added.
- The Cannabis Science Task Force must, after making the initial report, develop findings and recommendations for additional laboratory quality standards, including but not limited to, heavy metals in and potency of marijuana products. This second report to the Legislature with findings and recommendations is due December 1, 2021.
- A requirement is added that the Cannabis Science Task Force must, to the fullest extent possible, consult with other jurisdictions that have established, or are establishing, marijuana product testing programs.
- The LCB is granted rulemaking authority to address findings and recommendations provided in the Cannabis Science Task Force's reports.

- A redundant reference to members of the Cannabis Science Task Force with expertise in chemistry, microbiology, toxicology, and other expertise is removed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 2 and 5, relating to the transfer of authority and responsibility for marijuana product testing laboratory accreditation requirements to the Department of Ecology, which take effect July 1, 2022. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) The public, regulators, and marijuana businesses all rely on marijuana testing laboratories to perform accurate and reliable testing of marijuana products, and accurate lab results are fundamental to the public's trust in the regulatory system. Action is needed to avert a public health and safety crisis. The work the Washington State Liquor and Cannabis Board (LCB) and marijuana labs have performed to date is much appreciated, and commendable, but a comprehensive overhaul of the lab accreditation process is needed. Delaying implementation of the bill could be detrimental to the industry and the public. There may be a need for technical changes and changes to program financing, but overall, stakeholders are in strong support. Even those who opposed marijuana legalization support accurate and comprehensive product testing. There is a logical shift in responsibility for accrediting laboratories from the LCB to the Department of Ecology (Ecology), which has more scientific expertise. The LCB is happy to have the regulatory assistance of other agencies and supports the bill. From accrediting water quality laboratories and other laboratories, Ecology has experience in this field. Existing requirements related to lab practices and procedures are a good start, but currently there is a serious lack of detail to guide lab practices. Also, most existing testing methodologies and equipment were developed with marijuana products containing higher levels of delta-9 tetrahydrocannabinol (THC) in mind; now that there is consumer demand for products with low-concentrations of THC, existing testing methods and equipment are proving inadequate and unreliable for these low-THC products. Creating the Cannabis Science Task Force (Task Force) is a prudent way to proceed and will yield a positive framework from which Ecology can assume and expand laboratory accreditation responsibilities. However, consider adjusting the composition of Task Force to enable other types of industry representatives, not just scientists, to participate on the Task Force; this would allow for the consideration of a perspective that may not be directly science-related but is still valuable. Marijuana testing laboratories support the bill, but are concerned with the fees and expenses imposed on labs. Laboratories are certainly willing to shoulder some of the cost, but labs should not pay the entire cost of a program that benefits the state, citizens, and the marijuana industry. Perhaps moneys in the Dedicated Marijuana Account could be used, or consumers could be asked to finance a portion of the program costs.

(Opposed) None.

(Other) Recently, Ecology was tasked with conducting a study related to marijuana product testing laboratory accreditation, and this bill fixes gaps identified by the study in the current regulatory framework. Current gaps have the potential to compromise public health and safety. The bill is supported in concept by Ecology, but there are concerns with the implementation dates. There are key building blocks for a successful laboratory accreditation program still needing development before there can be a robust accreditation program. Laboratory standards and protocols are in need of development. Optimistically, it will take two to three years for these gaps to be fixed before rules can be developed. The work of the Cannabis Science Task Force will be used to fix existing gaps in laboratory practices, methods, and standards. There is support for leaving the current process intact as gaps in laboratory standards are fixed and agency rule-making is completed. A Washington State Department of Agriculture (WSDA) laboratory currently conducts some pesticide testing of marijuana products in coordination with the LCB. The WSDA also leads the regulatory effort related to marijuana-infused edibles to ensure compliance with food safety standards. The WSDA is ready to provide expertise on laboratory standards in this area of marijuana product safety and to chair a laboratory standards work group and participate in the Cannabis Science Task Force chaired by Ecology. The WSDA is prepared to implement the bill in its original form.

Staff Summary of Public Testimony (Appropriations):

(In support) There are over 1000 licensed marijuana producers and processors. Each batch of product must be tested at one of the 13 accredited labs. Among those labs, the amount of variability in equipment, operating procedures, and testing results is concerning. Without the proper levels of accreditation in place as soon as possible, the cannabis industry and the safety of cannabis consumers is at risk. The expedited timeline under this bill is necessary. Good actors in the industry are going out of business and good accreditation labs are leaving the marijuana sector.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Stanford, prime sponsor; Vicki Christophersen, Washington CannaBusiness Association; Seth Dawson, Washington Association for Substance Abuse Prevention; Jedidiah Haney and Jeff Doughty, The Laboratory Guild; Larry Ward, Testing Technologies, Incorporated; Amber Wise, The Cannabis Alliance and Medicine Creek Analytics; Shannon Stevens, Confidence Analytics; Tania Sasaki; Scott Riefler; and Chris Thompson, Washington State Liquor and Cannabis Board.

(Other) Carol Smith, Department of Ecology; and Kelly McClain, Department of Agriculture.

Persons Testifying (Appropriations): James Paribello and Jedidiah Haney, The Laboratory Guild.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.